

September 2, 2003

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**AUTHORIZATION FOR THE LOS ANGELES COUNTY DISTRICT ATTORNEY
TO CONTINUE TO ADMINISTER THE "FUNERAL BURIAL/DOMESTIC
VIOLENCE PROGRAM" WITH THE STATE OF CALIFORNIA, VICTIM
COMPENSATION AND GOVERNMENT CLAIMS BOARD FOR FISCAL YEAR
2003-2004, ALL DISTRICTS (3-Vote)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and instruct the Chair to sign the enclosed Resolution authorizing the Los Angeles County District Attorney to enter into an Agreement with the Victim Compensation and Government Claims Board (VCGCB) for the period July 1, 2003 to June 30, 2004. During this time, the Los Angeles County District Attorney will pay funeral/burial expenses for families of victims of crimes, and relocation costs for victims of domestic violence, on behalf of the VCGCB.
2. Authorize the Los Angeles County District Attorney to sign the enclosed Standard Agreement with the VCGCB for the Funeral Burial/Domestic Violence program. The VCGCB has advanced the Los Angeles County District Attorney \$200,000 to pay for qualifying claims.
3. Authorize the Los Angeles County District Attorney or his designee, on behalf of the County, to serve as Project Director and to execute and approve any extensions to the Agreement, amendments to any program goals or objectives, or budget revisions as part of the Agreement award.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of this Agreement is to continue the process by which the County may pay verified funeral/burial expenses pending approval by the VCGCB, when a provider of funeral/burial services is unwilling to wait for reimbursement from VCGCB through the normal claims payment process which may be lengthy. This process eliminates the need to postpone funerals in such instances, and facilitates payment of emergency relocation costs of victims of domestic violence.

As victims, and families of victims have become more aware of the availability of services, demand has increased. Based on Fiscal Year 2002-03 expenditures, the District Attorney has budgeted \$2,750,000 for Fiscal Year 2003-04, fully offset by revenue from the VCGCB.

The County has been participating in this program for three years. This program allows the County to be more responsive to the citizens which is consistent with the purpose of County government.

Implementation of Strategic Plan Goals

Program activities are in keeping with the purpose of the County's Strategic Plan vision by promoting the well being of individuals in the community who are victims of crime. It also demonstrates the County's commitment and compassion to provide assistance to victims and witnesses of crime regardless of their disability, age, gender or ethnicity.

FISCAL IMPACT/FINANCING

The anticipated total cost for Fiscal Year 2003-04 is \$2,750,000. The VCGCB is providing 100 percent of the program cost; therefore, there is no net County cost.

These funds have been included in the Los Angeles County District Attorney's 2003-04 budget. Based on the projected cost for Fiscal Year 2003-04, \$2,750,000 in appropriation and revenue was included in the District Attorney's budget to conduct this program.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Under the Agreement, the County will pay verified funeral/burial claims and domestic violence relocation expenses, on behalf of the VCGCB. The VCGCB will reimburse the County for all costs incurred.

The District Attorney's Office currently verifies the legitimacy of claims of non-reimbursed financial losses by victims of crime for VCGCB. However, once these claims are verified, they must be submitted to VCGCB for processing and disbursement of funds to compensate victims for these losses. Funeral and burial expenses are commonly included in such claims.

In many instances, the providers of funeral/burial services are not willing to provide the service pending receipt of payment by the VCGCB. This Agreement allows the District Attorney's Office to process verified funeral and burial expenses for the families of victims of crime when the provider is unwilling to wait for reimbursement from VCGCB and pay verified domestic violence relocation expenses.

The program operates using a \$200,000 appropriation which is replenished by the VCGCB as costs are incurred. The full amount of the program is included as revenue offset appropriation in the District Attorney's 2003-04 adopted budget.

IMPACT ON CURRENT SERVICES (OR PROJECTS):

The Funeral Burial/Domestic Violence Agreement does not propose attorney staff augmentation and is therefore not subject to the Board motion of December 15, 1998 requiring clearance with the Alternate Public Defender, Probation, Public Defender and Sheriff's Department.

CONCLUSION:

Instruct the Executive Officer-Clerk of the Board to return a copy of the adopted Board letter and two (2) copies of the approved Resolution, containing original signatures, to Albert Ablaza, Grants Analyst, Los Angeles County District

The Honorable Board of Supervisors
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September 2, 2003

Attorney, 201 N. Figueroa Street, Suite 1300, Los Angeles, California 90012. Any questions may be directed to Mr. Ablaza via e-mail at aablaza@da.co.la.ca.us or telephone at (213) 202-7683.

Very truly yours,

STEVE COOLEY
District Attorney

aa

Enclosure

c: Chief Administrative Officer
County Counsel

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

RESOLUTION

Accepting Funeral Burial/Domestic Violence

Agreement with the State of California

Victim Compensation and Government Claims Board,

Pursuant to California Penal Code Section 13835 et. seq

WHEREAS, the County of Los Angeles is charged with providing vital services in the area of courts, law enforcement, and adult and juvenile justice to a population in excess of ten million persons; and

WHEREAS, the County of Los Angeles, Office of the District Attorney, is authorized, pursuant to Government Code Section 26500.5, to enter into an Agreement for the receipt of federal and/or state funding from the State of California, Victim Compensation and Government Claims Board, for the nature of services contemplated herein; and

WHEREAS, the Board of Supervisors of the County of Los Angeles, pursuant to Penal Code Section 13835.2, has designated the Office of the District Attorney through its Victim-Witness Assistance Program as the major provider of comprehensive services to victims of crime; and

WHEREAS, the Victim Compensation and Government Claims Board has authorized funds to reimburse verified funeral/burial claims and domestic violence relocation expenses; and

WHEREAS, the County of Los Angeles, acting through its Board of Supervisors, desires continued participation in such a program entitled the Funeral Burial/Domestic Violence Program for the 2003-2004 Fiscal Year, and has the capability of providing such services through the District Attorney's Claims Verification Unit; and

WHEREAS, the Victim Compensation and Government Claims Board has allocated funds for County Fiscal Year 2003-04 for the Los Angeles County District Attorney's "Funeral Burial/Domestic Violence" Program that will ensure

claims are reimbursed and properly administered in accordance with applicable statutes.

NOW; THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the County of Los Angeles hereby authorizes the District Attorney to enter into an Agreement for the period of July 1, 2003 through June 30, 2004, with the State of California, Victim Compensation and Government Claims Board, for the above-referenced program;

BE IT FURTHER RESOLVED that the Board of Supervisors of the County of Los Angeles hereby approves acceptance of funds to be used exclusively for the designated program, which may be awarded pursuant to the attached Agreement;

BE IT FURTHER RESOLVED that the state funds received hereunder shall not be used to supplant local funds controlled by this body;

BE IT FURTHER RESOLVED that the Board of Supervisors of the County of Los Angeles hereby authorizes the District Attorney or his designee, to serve as Project Director for said program and to execute on behalf of Los Angeles County the Agreement, and to perform all further tasks necessary for the completion of the project, including execution and

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submission of amendments, progress reports and payment requests to the Grant Award Agreement.

I DO HEREBY CERTIFY that a regular meeting of the Board of Supervisors of the County of Los Angeles on the _____ day of _____, 2003, the foregoing Resolution was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Board of Supervisors of the County of Los Angeles this _____ day of _____, 2003.

County of Los Angeles

by _____
Chair, Board of Supervisors

VIOLET VARONA-LUKENS,
Executive Officer-Clerk of the
Board of Supervisors of the
County of Los Angeles

By _____
Deputy

APPROVED AS TO FORM
BY COUNTY COUNSEL:

LLOYD W. PELLMAN

By _____
Deputy

AGREEMENT NUMBER

BOC-3107

1. This Agreement is entered into between the State Agency and the Contractor named below

STATE AGENCY'S NAME

VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD

CONTRACTOR'S NAME

COUNTY OF LOS ANGELES

2. The term of this

Agreement is: JULY 1, 2003 THROUGH JUNE 30, 2004

3. The maximum amount \$ 200,000

of this Agreement is: Two hundred thousand dollars

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work 3 Pages

Exhibit B – Budget Detail and Payment Provision 1 Page

* Exhibit C – General Terms and Conditions GTC 1/03

Exhibit D – Special Terms and Conditions 1 Page

Exhibit E – Eligibility Review Guide 1 Page

Exhibit F – Bill Review Guide 1 Page

Exhibit G – JP County Revolving Fd Disbursement 1 Page

Exhibit H - Internal Revenue Code 6041 4 Pages

Exhibit I – Board Overpayment Collection Policy 5 Pages

**View at www.dgs.ca.gov/contracts*

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED (Do not type)



PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD

BY (Authorized Signature)

DATE SIGNED (Do not type)



PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

630 "K" STREET, SACRAMENTO, CA 95814

CALIFORNIA
Department of General Services
Use Only

☐ Exempt per _____

EXHIBIT A

SCOPE OF WORK

1. The Joint Power Verification Unit (Contractor) agrees to provide to the California Victim Compensation and Government Claims Board (Board) services as described herein:
 - a. Payment of verified funeral/burial claims pending approval by the Board when a provider of funeral/burial services requires immediate payment and is unwilling to wait for reimbursement through the normal claims process;
 - b. Payment of verified domestic violence relocation expenses emergency awards;
 - c. Payment of verified emergency expenses for victims of sexual assault; and
 - d. Payment of verified crime scene clean-up expenses as emergency awards.
2. The funds provided by this contract are solely for the payment of the above expenses from a Revolving Fund account if the Contractor complies with all the requirements of this contract.
3. The Contractor must ensure that staff who authorize emergency payments are separated from staff who issue the emergency payments as required by Government Code Section 13400 known as the Financial Integrity and State Manager's Accountability Act of 1983. (FISMA).
4. The services shall be performed at:

Los Angeles County District Attorney's Office
Victim Witness Center
210 W. Temple St., #12-514
Los Angeles, Ca 90012
5. The services shall be provided during regular work hours, Monday through Friday, except holidays.
6. The project representatives during the term of this contract will be:

State Agency: California Victims Compensation & Government Claims Board	Contractor:
Name: Adrienne Snyder, Joint Powers Manager	Name:
Phone: 916/327-0406	Phone:
Fax: 916/324-6381	Fax:

Direct all inquiries to:

State Agency: CVCGB	Contractor:
Section/Unit: FBOS	Section/Unit:
Attention: Bettzan Mar	Attention:
Address: 630 K Street, 1 st Floor, Sacramento, CA 95814	Address:
Phone: 916/327-5188	Phone:
Fax: 916/323-2695	Fax:

EXHIBIT A
SCOPE OF WORK

7. Detailed description of work to be performed and duties of all parties.

A. SERVICES:

1. The Contractor shall expend funds under this contract only when it has been verified that immediate payment of funeral/burial expenses is necessary. The Contractor shall document that the provider of funeral/burial services requires immediate payment and is unwilling to wait for reimbursement through the normal claims payment process. The Contractor shall verify the name and title of the person contacted, the name of the provider, and the telephone number. The Contractor shall maintain this documentation in the claim file and it shall be available for review, by the Board, upon request.
2. The Contractor shall expend funds under this contract only when it has been verified that an applicant is eligible for an emergency award for funeral/burial expenses or domestic violence relocation assistance or sexual assault relocation assistance or for crime scene clean-up expenses. The Contractor shall maintain verification documentation in the claim file and it shall be available for review, by the Board, upon request.
3. The Contractor shall expend funds under this contract only when each claim has been verified and the Eligibility & Bill Review Guides (Exhibit E and Exhibit F) have been completed for each claim prior to disbursement of any funds under this contract. The Contractor shall maintain the completed Eligibility & Bill Review Guides in the claim file and they shall be available for review, by the Board, upon request.
4. The amount paid by the Contractor shall not exceed the amount verified and authorized by applicable laws and Board policies.
5. The Contractor shall establish and enforce procedures to ensure that payments are made under this contract only to persons authorized to receive the funds.
6. The Board shall report all reimbursements made to the Contractor for expenses under this contract to the Internal Revenue Service (IRS).
7. The Contractor shall maintain its name and accurate Tax Identification Number (TIN) in the VOX database and insure that it matches the information submitted to the IRS. If the Board does not have the accurate TIN for the Contractor, the Contractor shall complete and return an IRS Form W-9 immediately upon execution of this contract.
8. Once the TIN is entered into the VOX database, the Contractor's name and TIN shall be input as the provider's name and number on the "Provider Bill Maintenance" screen in the Board's computer system.
9. The actual provider of the services (e.g., the cemetery or funeral home) shall be shown on the "moreable" window field next to the provider number (this will be the non-pay provider) on the Board's computer system. Information about the actual provider services is necessary for generating informational reports. If the TIN of the provider of services is not in the provider database, the Contractor shall follow the normal provider database procedures established by Board policies.

EXHIBIT A

SCOPE OF WORK

10. The Board and the Contractor shall comply with all applicable state and federal requirements. In compliance with Internal Revenue Code 6041 (26 U.S.C.A. § 6041, Exhibits H), the Board shall issue to the Contractor a Form 1099-MISC at the end of the calendar year stating the amount that the Contractor received as payee from the Board as payer in the calendar year. The Contractor shall be responsible for issuing a Form 1099-MISC to each provider in accordance with federal law. In compliance with Internal Revenue Code 6041, the Contractor shall provide the required Form 1099-MISC to providers no later than January 31st of the following year. In accordance with Board procedures, the Contractor shall submit a Form W-9 in place of the Payee Data Record (Std. 204).
11. The Contractor shall be responsible for abiding by established procedures to account for monies expended and deposited into this account. The Contractor shall account for funds in the manner prescribed by current county mandates and practices. A summary of such practices may be forwarded, upon the Board's request, to the Board for review by the Board's Audits and Investigations Branch.

B. OVERPAYMENTS

Any payment of a claim that does not meet the criteria established in statute and Board policy shall result in an overpayment and an audit finding, except as provided in the following paragraph. If an overpayment is identified as a result of the Contractor's failure to follow statute, Board policy, or the requirements of this contract, it is the Contractor's responsibility to ensure that the Revolving Fund account is replenished in the amount of the overpayment. The Contractor agrees that it shall not file a deficiency claim under State Administrative Manual Section 8072 or any other provision, for reimbursement from the Board for any deductions under this paragraph. In addition, the Contractor agrees to seek recovery of the overpayment from the overpaid party, in accordance with Government Code Section 13952.5(f)(1) and the Victim Compensation and Government Claims Board Overpayment Collection Policy, as adopted by the Board at its meeting on April 25, 2003. (Exhibit I).

If the Contractor follows statute, Board policy, and the requirements of this contract, and an overpayment is identified based on information unavailable at the time of the payment from an account and the overpayment will not result in an audit finding related to this contract.

C. REGULATIONS AND GUIDELINES:

All parties agree to abide by all applicable federal and state laws and regulations and Board guidelines, directives and memos as they pertain to the performance of this contract.

EXHIBIT B

PAYMENT PROVISIONS

1. **Payment**

The Board has advanced the Contractor \$200,000 to pay qualifying claims (Exhibit A, 1). The Contractor shall exercise good internal controls over the issuance of funds and requests for reimbursement of funds to replenish the account. The replenishment of the Revolving Fund is accomplished by the Contractor entering the expense into the Board's computer system as the provider using the Contractor's Tax Identification Number (TIN) (see Provider Notes 1, 11 and 21 for detailed instructions). The Contractor shall submit, monthly, a written accounting of the disbursements from the Contractor's revolving fund account on the JP County Revolving Fund disbursement Log (Exhibit G) to FBOS: Attn: Bettzan Mar with a copy to the designated Joint Power Analyst.

2. **Budget Contingency Clause**

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this contract does not appropriate sufficient funds for the program, this contract shall be of no further force and effect. In this event, the Board shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this contract and the Contractor shall not be obligated to perform any provisions of this contract.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the Board shall have the option to either cancel this contract with no liability occurring to the Board, or offer a contract amendment to the Contractor to reflect the reduced amount.

3. **Prompt Payment Clause**

The Board shall pay all properly submitted, undisputed invoices within 45 days of receipt, in accordance with Government Code Chapter 4.5, commencing with Section 927.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

GENERAL TERMS AND CONDITIONS

PLEASE NOTE: This page will not be included with the final contract. The General Terms and Conditions will be included in the contract by reference to Internet site www.dgs.ca.gov/contracts.

EXHIBIT D

SPECIAL TERMS AND CONDITIONS

1. PROGRAM EVALUATION AND MONITORING

The Contractor shall make available to the Board, and their representatives, for purposes of inspection, audit and review, any and all of its books, papers, documents, financial records and other records pertaining to the operation of this contract. The records shall be available for inspection and review during regular business hours throughout the term of this contract, and for a period of three (3) years after the expiration of the term of this contract.

2. REDUCTION OF CONTRACT AMOUNT

The Board reserves the right to reduce the contract amount if the Board's fiscal monitoring indicates that the Contractor's rate of expenditure will result in unspent funds at the end of the program year or when deemed otherwise necessary.

The Board or the Contractor reserves the right to terminate this contract upon thirty (30) days written notice to the other. In such an event, the Contractor shall be compensated for actual costs incurred in accordance with the terms of the contract up to the date of termination. Invoicing of the above mentioned costs must be submitted to the Board within thirty (30) calendar days of the date of termination.

3. CONFIDENTIALITY OF RECORDS:

The Contractor shall maintain the confidentiality of all records containing personally identifiable information consistent with Article 1, Section 1, of the California State Constitution, the Information Practices Act of 1977 (Government Code Sections 1798, et seq), The Contractor shall not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure is explicitly authorized by law. The Contractor shall ensure that all staff are informed of the requirements of this provision and of direction given by the Board in Board Policy Memo No. 00-02 Information Security Pamphlet for non-Board Personnel" (distributed February 1, 2000). The Contractor shall establish procedures to ensure confidentiality of personal information.

4. RETENTION OF RECORDS

The Contractor shall retain claim files in their respective file rooms for at least two (2) years after the claim's last activity date. The Board will automatically notify the Contractor if or when "inactive" files need to be sent to the Board.

The Contractor shall ensure that all staff is informed of the requirements of this provision and of direction given by the Board in the Board Policy Memorandum No. 01-02 (distributed July 26, 2001).

EXHIBIT D

SPECIAL TERMS AND CONDITIONS

5. SUBPOENAS

The Contractor is not the Custodian of Records for any of the materials it creates or receives pursuant to this contract. The Contractor shall post a notice in its receiving department or other appropriate place stating that all Victim Compensation subpoenas and document requests shall be served upon the California Victim Compensation and Government Claims Board.

The Contractor shall inform a server of a subpoena that the subpoena must be served on the California Victim Compensation & Government Claims Board at 630 K Street, 5th Floor, Sacramento, Ca 95814, Attn: Legal Office. The Contractor may also contact the Legal Office at 916/327-1998 for further assistance.

JP-CRU STAFF: Are you reviewing & “Z”ing with the physical claim file? Yes — No —

ELIGIBILITY REVIEW GUIDE

ELIGIBILITY	JP	VCP
Application filed w/in one year of incident or 19 th birthday? (or good cause shown)		
Is there documentation that substantiates a crime occurred? (crime report; EPO; RPO; medical records etc)		
Was there physical injury or threat of physical injury?		
Meets definition of eligible applicant.		
Any issue of involvement in events leading to the crime is resolved.		
Any issue of participation in a criminal act is resolved.		
Did the claimant cooperate <i>reasonably</i> w/law enforcement?		
Did the claimant cooperate w/the Board?		
For Derivative Victims Only: Is primary victim eligible? (w/exception of DV)		
Does the Derivative Victim qualify?		
VOX DATA		
Claimant name is correct.		
Claimant address is correct?		
“Is claimant filing claim?” field correct.		
“Benefit level” field is correct.		
“MH Limit” \$ in field is correct.		
Date of crime on VOX is correct.		
“Application filed by:” name is correct.		
“Application filed by:” address is correct.		
Applicant has legal authority to file for claimant.		
Felon status verification in file.		
Application is properly signed.		
Victim Witness Center is identified on VOX and correct.		
Per C CQ CN, C CQ VN, or C CQ CR, claim is not a duplicate (if there is a claim for the same claimant, check benefit level, and incident date and details before making duplicate determination: if different suspect and/or different crime, it is NOT a series of related events)		
REIMBURSEMENTS/RECOVERY		
If a civil suit has been filed, the name and address of civil suit atty is verified and worksheet sent to LORS?		
If incident was work-related, Workers’ Comp verification has been pursued and worksheet sent to LORS?		
If vehicle incident, auto insurance has been verified and worksheet been sent to LORS?		
CUSTOMER SERVICE		
Hearing notice is clear, correct, and sensitive. (including Zero Award Letter)		
Per app, mail, verifications, <u>all</u> claimed losses, issues or questions are addressed on history page and includes pending bills.		
All losses claimed are added to VOX. (including requested income and pending expenses)		

Reviewer's Name _____ JP # _____ Claim Number _____

JP-CRU STAFF: Are you reviewing & "Z"ing with the physical claim file? Yes _____ No _____

BILL REVIEW GUIDE

VOX DATA	JP	VCP
Quick review of VOX fields as listed on Eligibility Review Guide VOX Data. (benefit level, MH limits \$, Claimant/Applicant/ Filed-by etc.)		
PAYMENTS <u>CHECK EACH BILL SET FOR PAYMENT</u>	JP	VCP
Medical, mental health, and funeral/burial expenses		
Billed amount matches billed amount on VOX.		
Dates of service are entered into VOX correctly. (including the morable field if applicable)		
Applicant is legally liable for or has paid bill.		
Payee name on VOX is correct.		
Payee address on VOX is correct.		
Payee tax ID on VOX is correct.		
Non-Pay provider is linked on VOX.		
MH bills have been pre-auth'd if applicable.		
Income or support loss		
<u>Verified</u> disability period matches VOX (date of service).		
Wage loss calculations match <u>verified</u> information in file.		
Support loss has been pre-auth'd and paid 6 months in advance.		
For all expenses		
Loss is a qualifying loss under VCP statute and regulation, or bill is denied.		
Authorization is in file for vehicle purchase/modifications; home modification; payment for F/B in excess of \$7,500 and/or in-home care over 30 days?		
Payment does not duplicate a previous payment.		
Reimbursements/recoveries verified and added correctly to VOX (civil suit, auto insurance, work comp, SDI, SSDI, SSI, private disability, health insurance, medi-cal, medicare, other?)		
BRS, percent related, or other reduction applied correctly.		
Verified amount is correct.		
CUSTOMER SERVICE	JP	VCP
Hearing notice is clear, correct, and sensitive.		
Per app, mail, verifications, <u>all</u> claimed losses, issues or questions are addressed on history page and includes pending bills.		
All claimed losses are added to VOX.		

Month/Year _____

LEGEND

Columns 6, 7, 8 & 9: Enter a \$ amount in the column which applies to the type of expense paid

[wais.access.gpo.gov]

[Laws in effect as of January 2, 2001]

[Document not affected by Public Laws enacted between
January 2, 2001 and January 28, 2002]

[CITE: 26USC6041]

TITLE 26--INTERNAL REVENUE CODE

Subtitle F--Procedure and Administration

CHAPTER 61--INFORMATION AND RETURNS

Subchapter A--Returns and Records

PART III--INFORMATION RETURNS

Subpart B--Information Concerning Transactions With Other Persons

Sec. 6041. Information at source

(a) Payments of \$600 or more

All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments to which section 6042(a)(1), 6044(a)(1), 6047(e), 6049(a), or 6050N(a) applies, and other than payments with respect to which a statement is required under the authority of section 6042(a)(2), 6044(a)(2), or 6045), or \$600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

(b) Collection of foreign items

In the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by any person undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange, such person shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the amount paid and the name and address of the recipient of each such payment.

(c) Recipient to furnish name and address

When necessary to make effective the provisions of this section, the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

(d) Statements to be furnished to persons with respect to whom information is required

Every person required to make a return under subsection (a) shall furnish to each person with respect to whom such a return is required a written statement showing--

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) the aggregate amount of payments to the person required to be shown on the return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made. To the extent provided in regulations prescribed by the Secretary, this subsection shall also apply to persons required to make returns under subsection (b).

(e) Section does not apply to certain tips

This section shall not apply to tips with respect to which section 6053(a) (relating to reporting of tips) applies.

(Aug. 16, 1954, ch. 736, 68A Stat. 745; Pub. L. 87-834, Sec. 19(f), Oct.

16, 1962, 76 Stat. 1058; Pub. L. 94-455, title XIX, Sec.

1906(b)(13)(A),

Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title V, Sec. 501(b), Nov.

6, 1978, 92 Stat. 2878; Pub. L. 97-34, title VII, Sec. 723(b)(1), Aug.

13, 1981, 95 Stat. 344; Pub. L. 97-248, title III, Sec. 309(b)(1),

Sept.

3, 1982, 96 Stat. 595; Pub. L. 98-369, div. A, title VII,

Sec. 722(h)(4)(B), July 18, 1984, 98 Stat. 976; Pub. L. 99-514, title

XV, Secs. 1501(c)(1), 1523(b)(2), Oct. 22, 1986, 100 Stat. 2736, 2748;

Pub. L. 104-168, title XII, Sec. 1201(a)(1), July 30, 1996, 110 Stat.

1469.)

Amendments

1996--Subsec. (d)(1). Pub. L. 104-168 substituted ``name, address, and phone number of the information contact'' for ``name and address''.

1986--Subsec. (a). Pub. L. 99-514, Sec. 1523(b)(2), substituted ``6049(a), or 6050N(a)'' for ``or 6049(a)''.

Subsec. (d). Pub. L. 99-514, Sec. 1501(c)(1), in amending subsec. (d) generally, substituted ``information is required'' for ``information

is furnished'' in heading and, in text, substituted references to

persons required to make returns for former references to persons making returns.

1984--Subsec. (a). Pub. L. 98-369 inserted ``6047(e),''.

1982--Subsec. (a). Pub. L. 97-248 substituted ``6049(a)'' for ``6049(a)(1)'', and ``or 6045'' for ``6045, 6049(a)(2), or 6049(a)(3)''.

1981--Subsecs. (d), (e). Pub. L. 97-34 added subsec. (d) and redesignated former subsec. (d) as (e).

1978--Subsecs. (c), (d). Pub. L. 95-600 added subsec. (d) and redesignated subsec. (d) as (c).

1976--Subsecs. (a), (b). Pub. L. 94-455 struck out ``or his delegate'' after ``Secretary''.

1962--Subsec. (a). Pub. L. 87-834, Sec. 19(f)(1), substituted ``other than payments to which section 6042(a)(1), 6044(a)(1), or 6049(a)(1) applies, and other than payments with respect to which a statement is required under the authority of section 6042(a)(2), 6044(a)(2), 6045, 6049(a)(2), or 6049(a)(3)'' for ``other than payments described in section 6042(1) or section 6045)''.

Subsec. (c). Pub. L. 87-834, Sec. 19(f)(2), repealed subsec. (c), which related to returns of payments of interest by corporations.

Effective Date of 1996 Amendment

Section 1201(b) of Pub. L. 104-168 provided that: ``The amendments made by subsection (a) [amending this section and sections 6041A, 6042, 6044, 6045, 6049, 6050B, 6050H to 6050K, and 6050N of this title] shall apply to statements required to be furnished after December 31, 1996 (determined without regard to any extension).''

Effective Date of 1986 Amendment

Amendment by section 1501(c)(1) of Pub. L. 99-514 applicable to returns the due date for which (determined without regard to extensions)

is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99-514, set out as an Effective Date note under section 6721 of this title.

Amendment by section 1523(b)(2) of Pub. L. 99-514 applicable to payments made after Dec. 31, 1986, see section 1523(d) of Pub. L. 99-514, set out as an Effective Date note under section 6050N of this title.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to payments or distributions after Dec. 31, 1984, unless the payor elects to have such amendment apply to payments or distributions before Jan. 1, 1985, see section 722(h)(5)(B) of Pub. L. 98-369, set out as a note under section 643 of this title.

Effective Date of 1982 Amendment

Amendment by Pub. L. 97-248 applicable to amounts paid (or treated as paid) after Dec. 31, 1982, see section 309(c) of Pub. L. 97-248, set out as a note under section 6049 of this title.

Effective Date of 1981 Amendment

Amendment by Pub. L. 97-34 applicable to returns and statements required to be furnished after Dec. 31, 1981, see section 723(c) of Pub.

L. 97-34, set out as a note under section 6652 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-600 applicable to payments made after Dec. 31, 1978, see section 501(c) of Pub. L. 95-600, set out as a note under section 6001 of this title.

Effective Date of 1962 Amendment

Amendment by Pub. L. 87-834 applicable to payments of dividends and interest made on or after Jan. 1, 1963, and to payments of amounts described in section 6044(b) of this title made on or after Jan. 1, 1963, with respect to patronage occurring on or after the first day of the first taxable year of the cooperative beginning on or after Jan. 1, 1963, see section 19(h) of Pub. L. 87-834, set out as a note under section 6042 of this title.

Employer's Duties in Connection With Recording and Reporting of Tips

Pub. L. 94-455, title XXI, Sec. 2211, Oct. 4, 1976, 90 Stat. 1905, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) Suspension of Rulings.--Until January 1, 1979, the law with respect to the duty of an employer under section 6041(a) of the Internal

Revenue Code of 1986 [formerly I.R.C. 1954] to report charge account tips of employees to the Internal Revenue Service (other than charge account tips included in statements furnished to the employer under section 6053(a) of such Code) shall be administered--

“(1) without regard to Revenue Rulings 75-400 and 76-231, and

“(2) in accordance with the manner in which such law was administered before the issuance of such rulings.

“(b) Effective Date.--This section shall take effect on January 1, 1976.”

Section Referred to in Other Sections

This section is referred to in sections 3406, 3509, 6045, 6051, 6724 of this title; title 25 section 2719.

**CALIFORNIA VICTIM COMPENSATION
AND GOVERNMENT CLAIMS BOARD**

April 25, 2003

**630 "K" Street
First Floor Hearing Room
Sacramento, California**

**VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
OVERPAYMENT COLLECTION POLICY**

Issue

On occasion, the Victim Compensation Program (VCP) makes a payment to a claimant, attorney, or provider that is in excess of the California Victim Compensation and Government Claims Board's (Board) statutory authority. Government Code section 13965¹ provides that persons who have been overpaid by the VCP are liable for that amount unless certain specified exceptions apply. This proposal contains an overpayment collection policy consistent with section 13965 that effectively balances the Board's interest in collecting overpayments with the procedural due process rights and equitable interests of overpaid parties.

Background

Victims of Crime (VOC) Program Memorandum Number 91-01, distributed January 1991, was the first overpayment policy adopted by the Board and was adopted prior to the enactment of section 13965 (and its predecessor section 13969.3) (ATTACHMENT A.). The proposed overpayment collection policy is substantially similar to VOC Program Memorandum Number 91-01. However, the proposed overpayment collection policy affords overpaid parties due process rights that were not previously provided in Program Memorandum Number 91-01.

Overpayments occur for a variety of reasons. For instance, an overpayment may occur if a claimant/victim or provider submits fraudulent or misleading information to the Board. An overpayment may also occur if information submitted on an emergency award justifies its initial approval but information subsequently received shows that the crime committed does not fit the definition of a crime covered by the VCP. Finally, an overpayment may simply occur due to human error or during the processing and payment of a victim's claim.

Policy

A. Summary of VCP Overpayments

An overpayment is defined as any instance in which the VCP pays a claimant, provider or attorney in excess of its statutory authority. For instance, a claimant, provider, or attorney (i.e. the "overpaid party") receives compensation from the Board in excess of eligible verified expense and/or subsequently receives reimbursement from another source.

¹ All statutory references are to the Government Code unless otherwise indicated.

There are primarily three ways in which an overpayment may occur. First, an overpayment may occur as a result of an emergency award. Second, one may result from an eligibility determination for which prior approval is rescinded and reversed. Finally, an overpayment may result from the payment of a bill, the prior approval of which is rescinded and reversed.

This policy addresses each of these scenarios in which an overpayment may occur, the due process the Board will afford overpaid parties, the circumstances under which an overpayment may be “written-off,” and the circumstances under which the Board may waive its right to pursue collection of an overpayment. Once an overpayment has been identified, Board staff will notify the overpaid party and provide him or her with an opportunity for a hearing to contest the overpayment and/or to request a waiver of its collection.

Section 13965 is the Board’s general overpayment statute. It provides:

- (a) A person who has been overpaid or on whose behalf any provider or other person has been overpaid under this chapter is liable for that amount unless both of the following facts exist:
 - (1) The overpayment was not due to fraud, misrepresentation, or willful nondisclosure on the part of the recipient.
 - (2) The overpayment was received without fault on the part of the recipient, and its recovery would be against equity and good conscience.
- (b) All overpayments exceeding two thousand dollars (\$2,000) shall be reported to the Legislature pursuant to section 13928 and the relief from liability described in subdivision (a) shall be subject to legislative approval.

B. Emergency Awards

Emergency awards (EAs) involve immediate payments made to the claimant or to a provider on the claimant’s behalf in advance of VCP verification. Government Code section 13952.5 requires that emergency awards be disbursed within 30 calendar days of the application.

Situations in which an overpayment can occur as a result of an EA include, but are not limited to, the following:

- An EA is advanced and a regular award is subsequently denied. An example would be when a claimant is subsequently determined to be ineligible for program benefits;
- An EA is advanced and losses cannot be verified or losses have not been established;
- An EA is advanced and a regular application is allowed with losses fully reimbursed from another source. An example would be when the losses covered by the EA are subsequently verified as having been reimbursed by another source, such as a private insurer.

If an overpayment occurs because the applicant is ultimately found to not be eligible for compensation from the Board, the Board will work with the applicant to arrange a repayment schedule, as required by section 13952.5(f)(1).²

² Section 13952.5(f)(2) states, “If upon final disposition of the regular application, it is found that the applicant is not eligible for compensation from the board, the applicant shall reimburse the board for the emergency award pursuant to an agreed-upon repayment schedule.”

If the Board ultimately determines that the applicant is eligible for compensation but in a lesser amount than that provided in the EA, the Board will pursue collection of the overpayment pursuant to section 13965, as required by section 13952.5(f)(2).³

C. Eligibility Determinations

An eligibility determination is deemed incorrect when new information unavailable during the initial verification process warrants a change in the eligibility of a claim. Examples of when Board staff will recommend that the Board rescind and reverse its prior eligibility determination include, but are not limited to:

- When Board staff learns that the victim/claimant deliberately falsified or withheld pertinent information that would have resulted in the denial of the claim;
- When information received subsequent to the initial eligibility determination clearly indicates that an incorrect eligibility determination was made. An example would be when information originally submitted indicated that a qualifying crime occurred, but subsequent information proves otherwise, and/or;
- When a victim/claimant's action subsequent to the initial eligibility determination necessitates a determination that the victim/claimant is no longer eligible to receive benefits from the VCP. An example would be when a victim initially cooperates with law enforcement in the identification and apprehension of the suspect but subsequently fails to reasonably cooperate with law enforcement in the prosecution of the suspect.⁴

D. Payment Issues

An overpayment may result when the Board makes a payment in excess of actual verified losses or statutory limits. An overpayment may also occur when the victim/claimant or provider receives reimbursement from other sources, such as a civil suit recovery, workers' compensation, insurance settlement, or restitution payment after an initial award is made. In addition, overpayments also result when program staff reimburses a victim/claimant or provider more than once for the same qualified expense or pay a provider for services rendered by a different provider. Finally, overpayment of attorney's fees occurs when an attorney is paid in excess of Board statutory limits or deliberately falsified or withheld information, which would have resulted in denial of the claim.

E. Waivers

Once an overpayment has been identified as detailed above, Board staff will consider whether collection of the overpayment should be pursued. Pursuant to section 13965, the Board will not pursue collection of an overpayment if:

- (1) The overpayment was not due to fraud, misrepresentation, or willful nondisclosure on the part of the recipient, AND

³ Section 13952.5(f)(2) states, "If upon a final disposition of the application, the board grants compensation to the applicant, the amount of the emergency award shall be deducted from the final award of compensation. If the amount of the compensation is less than the amount of the emergency award, the excess amount shall be treated as an overpayment pursuant to Section 13965."

⁴ The Board adopted its policy for rescinding and reversing prior approval of claims at its meeting on April 18, 2001. A copy of the policy is attached. (See ATTACHMENT B).

(2) The overpayment was received without fault on the part of the recipient, and its recovery would be against equity and good conscience.

Recovery would be against equity and good conscience if it would cause the overpaid party undue financial hardship. Board staff will examine all sources of income available to the overpaid party and compare it with the cost of common necessities of life or allowable expenses (such as child support payments, etc.) to determine the overpaid party's net disposable income. The common necessities of life are defined as those expenses that, if not paid, would require the overpaid party to seek government assistance. The overpaid party has the burden of showing that collection of the overpayment would create undue financial hardship.

F. Due Process for Overpaid Parties

Pursuant to the due process provisions of the State Constitution and the Administrative Procedure Act (sections 11425.10-11425.50), all VCP claimants are afforded procedural due process. The fundamental requisites of due process are notice and an opportunity to be heard. For VCP overpayments, due process is the right of the overpaid party to dispute or overcome a determination that the party has received an overpayment and that its recovery should be pursued. Overpaid parties will be afforded due process as described below.

- Notice: Upon determining that an overpayment has occurred, Board staff will recommend to the Board that it rescind and reverse its prior approval of the claim. (See ATTACHMENT B). In addition, staff will make a recommendation as to whether there is sufficient information to support a waiver of its recovery. The overpaid party will be given written notice of Board staff's recommendation. The notice will provide the overpaid party with a detailed statement of how the overpayment occurred and give the overpaid party the opportunity to submit documentation to dispute the overpayment determination and/or request a hearing on the matter.

If Board staff also recommends pursuing recovery of the overpayment, the written notice will provide the overpaid party with information explaining his or her right to provide additional information to support a waiver of the overpayment's recovery. In such cases, a copy of the Board's financial evaluation form (ATTACHMENT C) will be also be included for the overpaid party to fill out and return to the Board.

- Opportunity for Hearing: If the overpaid party does not agree with Board staff's recommendation he or she may request a hearing before a hearing officer. The Board's regulations governing its administrative hearings will apply to these proceedings.
- Collection: If Board's staff's recommendation to rescind and reverse a prior approval of a claim and to pursue recovery of the resulting overpayment is upheld, Board staff will pursue collection of the overpayment in accordance with the provisions of the State Administrative Manual and any applicable statute or regulation governing the collection of debts owed to state agencies.

G. Overpayment Write-offs

Some overpayments simply cannot be recovered or are not cost effective to recover. In such cases, the Board will "write-off" the debt, as required by applicable debt collection statutes, regulations and State Administrative Manual provisions.

Specifically, section 13940 authorizes the discharge of accountability of debts when they are determined to be uncollectible or when the amount does not justify the cost of its collection. Additionally, Government Code section 13943.2 authorizes the Board to write-off any overpayments of \$250.00 or less.

The following provisions apply to the discharge of accountability of debts owed to the Board as a result of an overpayment:

IF....	THEN....
Overpayment is less than \$250.00	The Board has the option of writing off the overpayment under the provisions of 13943.2.
Overpayment is \$250.00 or over, but less than \$2,000.00	<ul style="list-style-type: none"> Pursuant to Gov. Code § 13965, the Board may authorize the Executive Officer to establish limits for the administration of these overpayments. However, if an overpayment is the result of a payment that is in excess of the Board's statutory authority, it shall be submitted to the Board, which, shall in turn, submit it to the Legislature for approval. (Gov. Code § 13928.)
Overpayment is over \$2,000.00 and arises through no fault of the recipient	<ul style="list-style-type: none"> The Executive Officer shall submit these overpayments to the Board, which will report them to the Legislature in the manner prescribed by Gov. Code §13928 (Omnibus Claims Bill) and the relief from liability for these debts shall be subject to legislative approval. (Gov. Code §13965.)

H. Conclusion

In the majority of cases, the Board will pursue the collection of overpayments from persons who have perpetrated a fraud against the Board, intentionally misrepresented facts, or willfully failed to disclose material facts to the Board. All overpayments must be identified and processed in conjunction with a recommendation that the Board rescind and reverse its prior approval of a claim.

Recommendation

Staff recommends that the Board adopt the overpayment policy as set forth herein. If it is determined that regulations are necessary to implement this policy, staff will develop and present them to the Board at a later date.